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D. Mbirizi

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# **SOME ASPECTS OF MAKERERE'S LEGAL EDUCATION IN DEVELOPMENT\***

D. Mbirizi\*\*

## **In Lieu of an Introduction**

Legal education at Makerere's Law Faculty has always been a highly contentious matter. In the Faculty's first decade, argument seemed to centre around the mechanics of instruction - as to whether, for example, the case method was more effective than the lecture method.<sup>1</sup> In the second decade, the discussion has centred around more substantial theoretical and methodological issues. There has been an attempt to fathom the substance of the basic legal education guidelines,<sup>2</sup> and actual questioning of the content of the syllabi and curricula, including their suitability for Uganda. While the questioning has been multi-dimensional, space allows here a concentration on only the education-in-development dimension.

The questions addressed herein are: To what extent has law-in-development been accomplished; what has been the theoretical and practical substance of the accomplishment; and what have been the attendant problems. Here, too, the discussion will be limited and centred on the Commercial Law Department with which the author is most familiar, though in course of the discussion other departments which are part of the same law faculty will necessarily be considered.

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\* We are aware of the extensive literature on law-in-development, which we cannot go into here due to shortage of space. But it should be noted that we accept R. Seidman's definition of development. See his *THE STATE, LAW AND DEVELOPMENT* (1978), especially at 67-8.

\*\* Formerly of Uganda's Law Development Centre; then of Makerere's Law Faculty; and now of the Law Faculty, National University of Lesotho.

1. Argument over these matters showed up in varying staff seminars and faculty barazas in the early 1970's.

2. GOVERNMENT MEMORANDUM ON THE REPORT OF A COMMITTEE APPOINTED TO STUDY AND MAKE RECOMMENDATIONS CONCERNING LEGAL EDUCATION, Entebbe: Govt. Printer, Session Paper No. 3 (1969) [hereinafter the GOVT. WHITE PAPER], and the Committee, the Gower Committee, which produced the *Gower Report*.

The paper will be divided into two major parts. The first part will briefly discuss the theoretical and historical basis of law in development, first, in the USA, and then in East Africa. The second part will consider legal education in development at Makerere. Here we shall deal, first, with the theoretical, and then with the practical issues.

## I. Historical and Theoretical Basis of Law in Development

### A. *American Origins of Law in Development*

The law in development movement seems to have arisen in the USA in the 1950s as part of American missionary notions of helping the Third World nations develop by sharing with them the know-how and modernity of the USA. This had, in part, earlier given rise to Development Economics. The Law-in-Development movement was, in short, an attempt to produce a development lawyer who, like other American development scholars of the day, was to go to the Third World to help foster development, but in this case through law.

The movement was coloured by anti-Communism and the Cold War posture of the times and the need, therefore, to have the Third World countries as areas with stable and predictable commercial transactions within an implicit liberal capitalist sphere. The movement, it was thought, would assist to enlarge and/or strengthen the American sphere of influence through law.<sup>3</sup> The movement also accorded well with the new post-war balance of global economic forces, in which the USA emerged as the most powerful Western nation, calling for free trade which would help it penetrate those areas formerly controlled by European colonial powers, notably Britain and France. It is important to remember that through the Lendlease Agreement the USA aided Europe to recover from the war devastation partly in return for an understanding that such free trade would be allowed.<sup>4</sup>

So, just as the (development) economists were asserting America's right to free trade in former European spheres of influence—a really subtle assertion of the right to dominate those spheres<sup>5</sup>—their development lawyers were asserting the superiority of American legal education theory

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3. A.J. GARDNER, *LEGAL IMPERIALISM, AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* 6 (1980).

4. See W.L. Clayton, in *Foreword*, C. WILCOX, *A CHARTER FOR WORLD TRADE* (1972); and R. GARDNER, *STERLING DOLLAR DIPLOMACY* (1969).

5. This appears a reasonable interpretation in view of the American economic superiority over the European Allies at the time.

and methodology. Harvey's tone captures this intellectual mood thus:

At the risk of sounding provincial, I would assert categorically that the philosophy and methodology of American legal education are more responsive to the needs of Africa than anything Britain or France can provide.<sup>6</sup>

It was in this spirit that the American legal-education-for-development missionaries came to Africa and the Third World in general.

The legal theory that these missionaries brought with them was pragmatic, rejected legal formalism and saw law as a means to particular purposeful policy ends.<sup>7</sup> It rejected any overriding philosophy of law, nay, it bore a philosophy of law that was analytical and anti-philosophy.<sup>8</sup> Pound explains this point thus:

The need of stability and certainty in the maturity of law and the importance of social interests in security of acquisitions and security of transactions in a commercial and industrial society, called for an analytical rather than a philosophical method; the task of the jurist was to perfect rather than to build anew.<sup>9</sup>

Even assuming that the analytical model was the proper one for "a commercial and industrial society," which is denied because the Third World countries to which the law and development missionaries went were not commercial or industrial, the theory was flawed from the very outset. More fundamentally, while the Third World countries needed to rebuild their socio-economic systems for the better, they were to be treated to legal theory which sought to perfect what was found rather than build anew; and with blissful ignorance of the socio-cultural and political systems of the countries to which they went, only chaos would be the sequel.<sup>10</sup> But that is another story.

For now, we must note that this American legal theory was also sociological, law being seen as a means of social control. All available knowledge had to be brought to the task. This called for taking into account "contributions which other disciplines and sciences can make to

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6. W.B. Harvey, *Final Report on the SAILER* (Staffing of African Institutions for Legal Education and Research Project, Ford Foundation Reports, New York).

7. A.J. Gardner, *supra* note 3, at 5-15 and ch. 3.

8. See Twining, *Pericles and the Plumber*, 83 L.Q.REV. 396, especially at 404-06 and 413-14 (1967).

9. R. POUND, *THE SPIRIT OF THE COMMON LAW*, 148-50, 210 (1930).

10. A.J. Gardner, *supra* note 3, at ch. I.

the solution of social problems.”<sup>11</sup> Thus, multi-disciplinary enquiry was part of the kit the law-for-development missionaries carried to the Third World. Its content as lawyerly craftsmanship is well summarized by Llewelyn. Says he:

The essence of our craftsmanship lies in skills and wisdoms; in practical, effective, persuasive, inventive skills for getting things done; any kind of thing in any field. . . . We are the trouble shooters.<sup>12</sup>

Thus it was apparently craftsmanship which entailed the study of law not as a unity in its inter-connectedness, but as a craft pegged into a myriad of other crafts, the other social sciences.<sup>13</sup> This was legal neo-empiricism of sorts,<sup>14</sup> which gave rise to the problem that many law-in-development scholars felt they had to “balance” what they took from the other social sciences so that legal education was not overrun by them but remained legal in its own right. We shall see that the problem showed up in Makerere’s law-in-development approach, but more of this later. For now, we must turn to see, first, how the law-in-development movement unfolded in East Africa in order to appreciate later on its specific character at Makerere.

### *B. Early East African Law in Development*

For a long time, East Africa had no local or systemised legal education.<sup>15</sup> This was partly because under the then operative Indirect Rule system, customary law that governed the activities of most Africans was dealt with in the native courts which allegedly needed no lawyers, and also partly because it was feared that legal education might strengthen and help articulate anti-Colonial demands.<sup>16</sup>

In the wake of modernisation and continuing nationalist pressure, the need for legal education became clear. The groundwork was prepared by the London Conference on the Future of Law in Africa.<sup>17</sup> While the

11. Currie, *The Materials of Law Study*, 3 J. LEGAL EDUC. 333-5 (1951), as quoted in Twining, *supra* note 8.

12. See K. LLEWELLYN, *JURISPRUDENCE: REALISM IN THEORY AND PRACTICE* 316 (1962).

13. D. Mabirizi, *The Basis of East African Legal Education* 25-30 (mimeo) Dar es Salaam (1984).

14. *Id.*

15. *Id.*

16. L.C.B. GOWER, *INDEPENDENT AFRICA: THE CHALLENGE OF THE LEGAL PROFESSION* 111 (1967).

17. A.N. Alott (ed.), *The Future of Law in Africa*, RECORD OF THE PROCEEDINGS OF THE LONDON CONFERENCE, 28th December, 1959 - 8th January 1960 46-53 (1960).

politicians were shaping the constitutions through Lancaster House Conferences, the legal educators were busy formulating legal education policy in London.

The London Conference showed concern for lack of local legal education in the Commonwealth countries and recommended the setting up of a committee to study the matter more closely. Thus came the Denning Committee, which pointed out the need to set up local facilities that would produce future lawyers well grounded in their national law.<sup>18</sup> Not much, however, seems to have been said about law-in-development as such, a matter which was not yet particularly popular within British legal education.<sup>19</sup>

However, when, following the Lockwood Report on Higher Education in East Africa, it was suggested that a Faculty of Law be established at Dar es Salaam from October 1961, the law-in-development theory quickly came with the American legal education missionaries, whose origins we have seen. This was so though the first staff was essentially of British background,<sup>20</sup> and the school, at first, a College of London University.<sup>21</sup>

Indeed, just as the British granted political independence and left East Africa open to American influence, so did they open the law school and leave it open to American law in development legal education steeped in pragmatic sociological jurisprudence. Thus, Rockefeller, the Maxwell Centre at Syracuse, SAILER (Staffing of African Institutions for Legal Education and Research), the American Program for Cooperation in African Legal Education and Research and other American agencies supported the American legal missionaries at Dar in varying ways. They supplied American staff, books and scholarships to train future African law teachers in American law schools.<sup>22</sup>

Soon Dar produced American-style casebooks<sup>23</sup> and teaching materials that often bore extracts from other social sciences as well. This accorded well with the spirit of sharing American legal education expertise with East Africa. However, more specifically interesting for purposes of this

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18. See *Report of the Committee On Legal Education For Students From Africa* (1961), cmnd. 1255.

19. We have endeavoured to explain this elsewhere. See Mabirizi, *supra* note 13, at 18-24.

20. *Faculty of Law at Dar es Salaam*, 5 J. AFR. L. 73 (1961); 6 J. AFR. L. 151 (1962).

21. *Id.* at 152-5.

22. See Allott, *American Program for Cooperation in African Legal Education and Research*, 5 J. AFR. L. 121 (1961); J. BAINBRIDGE, *STUDY AND TEACHING OF LAW IN AFRICA* (1972); Johnstone, *American Assistance to African Legal Education*, 46 TUL. L. REV. 657 (1972).

23. E.g. I.R. MACNEIL, *CONTRACTS IN EAST AFRICA: INSTRUMENTS FOR SOCIAL CO-OPERATION* (1968).

discussion was Robert Seidman's Law and Development course. There he argued that law, a value-neutral tool, could be used to effect development, to remove poverty and oppression.<sup>24</sup> He went to great length to prepare his materials to suit the local conditions, but at times the students found his course cumbersome because it required not only the knowledge of the rules of law but also a pragmatic application of the law to the local development problems. It was perhaps an exemplification of the "balancing problem" produced by American multi-method law-in-development theory as already suggested. To be sure, the students seemed to prefer the somewhat straight British-style law lectures which simply discussed statutes, cases and reforms from the rules as such. These lectures were, indeed, what a number of law teachers with a strong British background preferred. They also did not bother themselves much with law-in-development.

Be that as it may, by 1965 it was clear that the Faculty was to teach law in its social, economic and historical contexts, in an approach concerned with development and with the production of lawyers for societies in revolution.<sup>25</sup> This vision as summarised by William Twining seemed to differ from that of the conservative American pragmatic one earlier seen, pointing to the reality of theoretical differences in law-in-development. However, Twining was still speaking within the stream of a law-in-development environment much-shaped by American legal education methodology. In short, anyhow, it seemed Dar was to teach all its law for development.<sup>26</sup>

## II. Makerere's Law in Development

### A. *A Note on the Official Guidelines*

When Makerere's Law Faculty was born in 1968, it, too, was to research and teach law in social and economic context. The position was spelled out by the Gower Committee Report, which stated that the function of University legal education is "to produce men with an understanding of the role of law in society, and a deep and thorough grounding in legal principles."<sup>27</sup> Government basically accepted this position thus:

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24. See T.W. Hutchison, *Law and Development in Independent English-speaking Sub-Saharan Africa*, in *AFRICA AND LAW* (1968).

25. Twining, *Legal Education Within East Africa*, *EAST AFRICAN LAW TODAY* (1965).

26. *Id.*; but see Yash Ghai, *Goals of African Legal Education: Comment*, in HAILE SELASSIE (Vanderlindern ed.), Addis, 1968.

27. Gower Report, *supra* note 2.

The law student must be made constantly aware that legal rules do not operate in a vacuum but in a specific social and economic development, that law is not a self-contained system but part of the social process, that it is not enough to consider any problem or situation from a purely legal point of view without at the same time showing the students its social implications. . . . We need facts and well-informed and balanced views of society, and we must know how relevant behaviour is affected by legal rules.<sup>28</sup>

Law was, therefore, to be studied with regard to its "historical, economic, social and political influence in the country."<sup>29</sup> More of this later. First we shall see that the interpretation of these guidelines has recently not been a very happy exercise.

### ***B. Makerere's Law in Development, 1968-80***

In the early years of the Faculty, a number of Ugandan law teachers returned to Makerere from abroad. These were people who had been graduated at Dar, and had subsequently pursued graduate study in American law schools. They enhanced law-in-development legal education methodology, as they were interested in teaching law for development in their courses. In fact, some of them even produced American-style teaching materials that relied partly on the other social sciences.<sup>30</sup> Hardly any of them, however, questioned the theoretical framework, which in typical American pragmatical style was essentially analytical, and intended to perfect the law rules within their status quo. Hardly any of them questioned the law's socio-economic foundations for building anew, for social transformation for the better.<sup>31</sup> The history of the law (and its social environment) was treated but usually as mere background material.<sup>32</sup> There remained a number, however, who, in the typical British style earlier adverted to, did not concern themselves with law-in-development.

In this mix of legal education methodology, the ambition to teach law for development was not always well articulated. This situation continued until 1980 when there was something of a theoretical explosion.

28. See Govt. White Paper, *supra* note 2, para. 18.

29. Gower Report, *supra* note 2, at para. 37, approved in Govt. White Paper, *supra* note 2.

30. E.g., *THE LAW OF BUSINESS ORGANISATIONS IN EAST AND CENTRAL AFRICA*, (Katende, Chesterman, Thomas and Mann eds.), Nairobi: EALB, 1976.

31. This point must not be misunderstood. The author does not doubt that the Makerere Law Faculty staff was a very good one, and that even their works were very well done. What is being questioned is the theoretical framework that animated their work.

32. Indeed, in many teaching materials, the history only appeared briefly at the beginning.



### C. Makerere's Law in Development 1980-85

#### 1. General

At the centre of the storm were two questions: First, there was the question whether all law was to be taught in a law-in-development framework. Second, there was the question, assuming that if any law-in-development was to be taught at all, what law-in-development theory was to be applicable. Two major "schools of thought" emerged. For ease of reference, we shall refer to one as the Legalistic school, and the other as the Commercial Law school. We must now turn to consider each group separately.

#### 2. The Legalistic School

This school argued that while Uganda's legal education could concern itself with development, the Government's position was that emphasis at the faculty had to be upon the rules of law as such.<sup>33</sup> The argument was, in part, based on the allegation that most law students aimed at careers in legal practice.<sup>34</sup> It was, further, based on the wording of the Government White Paper on the *Gower Report*, especially paragraph 9 which quoted Professor Parry as stating that

[l]aw is a living and practical thing. It can and indeed should be studied to some extent in the abstract. But a man is not a lawyer unless he can and does put his knowledge to use by practising the law. As a consequence, the teacher must always have an eye on practice, be it public or private practice in the courts, or the sort of office practice the government lawyer has accustomed us to.

Also relied on was paragraph 18 of the White Paper, which, while accepting the broad-based law-in-context approach suggested by the Gower Committee, also stated that the function of University legal education was to produce men with "a deep and thorough grounding in legal principles." The same paragraph also seemed to suggest that the social circumstances related to law were to be taught only in order to sharpen the law students' practical ability.<sup>35</sup> It, therefore, appeared that on the whole there was no basis for teaching all the law at the Faculty from the law-in-development perspective.

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33. See Mbirizi, *supra* note 13, at 36-41.

34. See E. Khiddu-Makubuya, *Jurisprudence as a law course at Makerere*, PROCEEDINGS OF THE DAR/MAKERERE SUBJECT MEETING, DECEMBER 14-17, 1983, Faculty of Law, Dar es Salaam, 1984.

35. See Govt. White Paper, *supra* note 2, at 6.

However, if there was to be any law-in-development teaching at all, its purpose should, *inter alia*, be to help produce a Third World policy maker, articulate in legal craftsmanship, who would not only be able to make law conform to desired policies, but who would also out-manoeuvre the developed country's lawyers in contractual and other negotiations.<sup>36</sup> To do that it was necessary to go into the law rules as such, and, even, delve into such matters as drafting documents. One would have thought, however, that under Uganda's legal education set-up these very professional practical matters were to be mainly left to the Law Development Centre. This would leave more time to the faculty for theoretical rigour. Above all, it appears that this approach trivialised problems of under-development to the level of mere legalistic negotiation.

History was conceded as important to describe past trends, but insistence on history was described as "historicism" in a "Popperian" fashion.<sup>37</sup> Further, other social sciences were also important but the task of a law faculty was the teaching of *law*. In any case, it was suggested that the law teacher was usually not competent to go into the other social sciences, which were themselves full-fledged courses. The problem of "balancing" law with the other social sciences - earlier referred to - thus reared its head. Law was seen as law; it was accorded a status independent of the stream of society, its policy and economy, of which it was (and is) but a part. As an inevitable corollary, the law's socio-economic content was to be seen, if at all, as matter apart, in the other compartments of the other social sciences. So the false<sup>38</sup> theoretical problem of balancing had to arise.

It was, further, said that if law was to be studied as a science, it was to be examined within the context of that which was workable and useful for society, and for the purpose of making practical suggestions regarding practical developmental (and other) problems. "Abstract" questioning (i.e. philosophy) of legal phenomena had to be eschewed.<sup>39</sup>

This was a subtle reproduction of the American pragmatic analytical model<sup>40</sup> of law-in-development with an unmistakable conservative content.

36. Aspects of this appear in E. Khiddu-Makubuya, *id.*, and in his critical review of D.W. NABUDERE, *POLITICAL ECONOMY OF IMPERIALISM*, Zed (1977).

37. See M. CORNFORTH, *THE OPEN PHILOSOPHY AND THE OPEN SOCIETY* (1968).

38. The problem was theoretically false if we agree that law has, ultimately, no life apart from that of society which produces it. See Sol Picciotto, *Law, Life and Politics* in *THE LIMITS OF LEGAL RADICALISM* (I. Shivji, ed.) 36 at 47, Faculty of Law, University of Dar es Salaam (1987).

39. Mbirizi, *supra* note 13, at 40-44.

40. J.D. Bernal's indictment of pragmatism remains relevant. See his *SCIENCE IN HISTORY* 791-

If history was (purely) descriptive, and there was to be no philosophy, questions of how and why the law had come to be what it was were not to be gone into as questions on dynamic material, if at all. If the analysis was to be confined to the existing "workable and useful," the status quo could well be maintained. Moreover, if "the practical" was not based on the questioning of the foundations, it could only be the practical within the status quo.

### 3. The Commercial Law School

#### (a) The Theoretical Arguments

This school expressed the views of the overwhelming majority of law teachers in the Commercial Law Department. The school argued that first, law as such, without the social and economic conditions giving rise to it or interacting with it or in whose milieu it operates, cannot be meaningfully taught or learned except as a lifeless abstraction. They further argued that if the faculty was to produce lawyers who not merely parroted the rules of law but were helpful participants in Uganda's struggle to develop, this conceptualization of law was a must.<sup>41</sup> This argument was buttressed by Government's having accepted the broad law-in-context approach of the Gower Committee already referred to. Moreover, those who drafted the *Gower Report* were aware that in the new nations of Africa the lawyers' tasks were broader than those customarily associated with lawyers in England and other Common Law countries; they knew that apart from the traditional practice jobs, these new lawyers would be called upon to play important roles in politics, commerce, administration, in short, in the development process itself.<sup>42</sup> The Makerere law graduates, therefore, were to be not just narrow legal technicians but "broad" legal engineers<sup>43</sup> capable of doing the traditional "technical" legal work as well.

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92 (1965), where he says that pragmatism's founder, William James, "took his science from evolutionary biology, particularly from the abuse of the doctrine of survival of the fittest. It was good to survive, therefore what led to survival must be good and the way itself must be the true one. Truth was what worked and paid off. This doctrine had the convenience of throwing the cloak of philosophic approval over church going and money making alike. It was, thanks to John Dewey. . . destined to be the basis of American liberal thought and education. For all its advanced character, it was scientifically empty and morally bankrupt. . . ."

41. J.A.S. Musisi, *The Teaching of Law in The Third World: The Case of Makerere* (mimeo), Commercial Law, Makerere, 1980.

42. Gower Report, *supra* note 2, at para. 2.

43. Echoing Twining, *supra* note 8, at n. 8.

To realise this aim the Gower Committee had, indeed, emphasised that "legal subjects should only be taught in terms of political and social history, and their social and economic environment."<sup>44</sup>

In this way, it was argued, the Committee had aimed at producing a development lawyer of sorts. This point was emphasised in the Committee's tentative syllabus, which was broad and embodied an unmistakable element of law-in-development. There was, for example, to be a course on Introduction to Modern African History and Politics, which would examine, *inter alia*, current social and political problems, social and political change in Uganda and methods of social and political change. There was to be a course on Law and Economics in East Africa and a course on Economic Development and the Law, which would teach community development, economic planning and their legal implications, etc. Land law was to consider, among other things, land use and agricultural development. Government had noted this syllabus with interest but hoped that the University, in shaping the curriculum, would be guided by paragraphs 10-20 of its White Paper. These, in essence, required a curriculum which would produce men (and women) with an understanding of the role of law in society and a deep and thorough grounding in legal principles.<sup>45</sup>

In short, to the Commercial Law school, there was no doubt that *all* law taught at the Faculty was to have a law-in-development content. The Commercial Law Department, therefore, went ahead and infused a law-in-development content in its courses. We must now turn to see the nature of the theory that informed this infusion, how it was actually effectuated and some of the problems encountered.

#### (b) Commercial Law's Law in Development

##### (i) Summary of the Practice

Foremost, the Department rejected the American pragmatic model, which it found theoretically flawed<sup>46</sup> and unsuitable for Uganda's development demands. It, then, attempted to analyse legal concepts historically, using the explanatory power of Political Economy. History here was not just descriptive but dynamic and philosophical, and, like the Political Economy, it was not merely background material, but an integral part of

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44. Gower Report, *supra* note 2, at para. 37.

45. Govt. White Paper, *supra* note 2, at para. 18.

46. Musisi, *supra* note 41.

the legal material it discussed. With this monistic model, the false problem of “balancing” law with the social sciences did not arise.<sup>47</sup>

A legal concept would be described, then traced historically, and its meaning under changing socio-economic conditions unearthed. The purpose was, as in all science, to seek the “law” and forces that govern the movement of the concept. The socio-economic circumstances were, as much as possible, seen in their interconnection and unity and not in separate compartments. In this way, law was seen as part of the dynamic socio-economic process, and its dialectical unity with its socio-economic circumstances was restored.<sup>48</sup> The other social sciences, we reiterate, were thus made use of as integral parts of the matter being discussed, not as separate matters or sciences. In discussing freedom of contract, for example, the dynamics of competitive industrialism, laissez faire and atomism it stood for would be probed not as Political Science, Philosophy or Economics, but as parts of this freedom of contract they gave rise to and stood with.<sup>49</sup>

With the legal concept understood, it would be demonstrated and probed through an examination of the statutes and cases. Again, this was done in light of the socio-economic circumstances, especially as to how it affected and was affected by these circumstances. Statute and case law would, however, not respond in every tiny detail to the socio-economic, historical milieu, but it would always respond to the internal unity of the legal system, which had to be delved into fully. Therefore, no attempt was made to see in every tiny detail of the law the social and economic environment and thus force law into what would otherwise amount to mere determinism. The law was here, then, simply followed to its internal web, thereby acquainting the student with all its technicalities and contexts.

The method would be explained to the student in detail within approximately the first two weeks of class. After this he would be required to use it to prepare for class and eventually to make case studies or prepare other research papers.

## (ii) Some Problems

The major problem was the paucity of teaching materials. The traditional texts were inadequate, mainly because they lacked depth for pur-

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47. Those who charged the Department with having problems of balancing were simply transferring their theoretical difficulties to the Department. See *supra* note 38.

48. It had apparently been taken away by American Pragmatism.

49. See Mabitizi, *supra* note 13, pp. 44-48. See issues raised by R.W. Tenga, *The Historical and Socio-economic Approaches in Learning the Law: Dar es Salaam and Third World Perspectives in Jurisprudence*, in *supra* note 38, at 95-116.

poses of our methodology and bore hardly any developmental content for Uganda's conditions. There were, of course, a few texts, like Holdsworth,<sup>50</sup> which proved invaluable but of these there were usually not enough copies to go round. Thus, the search, especially initially, for proper sources demanded a lot of time, both for the student and the lecturer, time which, in the quest for knowledge, had to be found. In fact, it was amazing how resourceful students could be.

There was no doubt that the solution to the problem was for the lecturers to produce the needed teaching materials. However, this was and is bound to be slow because of the heavy teaching loads on the staff. Nevertheless, over the last five years, a sizeable amount of material has been developed.

Another problem was the Faculty Administration, which thought that the approach was rather strange and was not really teaching law but Political Economy. This was but a reflection of theoretical problems as regards the content of law, a problem to which reference has already been made. However, thanks to the liberal academic tradition of the University, the Commercial Law Department was able to continue its work.

Indeed, to the Department, no strangeness was found in the method, which increasingly produced good results and work commended by external examiners, both as regards the purely legal technicalities and the developmental dimension. The most successful courses were Commercial Law II,<sup>51</sup> in which results in the seventies had been rather poor, and Business Associations.<sup>52</sup> So well understood were these courses that the students produced rich research papers (usually case studies) on the character of the law in the developmental context of Uganda. The papers usually examined how the law was being applied in the field and established some conclusions on the results of this application for Uganda's development, conclusions which pointed not only to the need for specified legal reform but also to the limitations of the law, in development.

Commercial Law I,<sup>53</sup> though successful at the level of teaching the legal technicalities, was less successful at the level of theoretically explaining those rules within the stream of the Department's development theory referred to earlier. It was found that this was due partly to the fact that Commercial Law I's material, especially its Sale of Goods, was perhaps

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50. W.S. HOLDSWORTH, A HISTORY OF ENGLISH LAW (1936-66).

51. *I.e.*, Banking and Insurance.

52. *I.e.* Company Law, Partnership, Co-operatives and Public Corporations.

53. Sale of Goods, Hire-purchase and Bankruptcy.

more abstract, under Uganda's socio-economic conditions, than that of Banking and Insurance in the other Commercial Law course and that of Business Associations. While the practical content of the law in the latter courses was relatively easy to demonstrate from the real world, this was not always the case as regards the content of that in Commercial Law I. This was pointed up partly by the fact that though there had been a trend of the weak students in the other Commercial Law courses sloganeering bits and pieces of Political Economy, there were apparently more such students in Commercial Law I.

This sensitised the Department to the fact that the selection of teaching materials in Commercial Law I—as, indeed, in all the other courses—had to be done more carefully. This also pointed to the need for the Department to develop expertise in passing on the material to the students, using the methodology. The Department also realised that without such expertise, there was a clear danger that because the integration of the material was not always so easy, the weak student could pick up only the bits and pieces easy to appreciate, which pieces, because they would be inadequate, deteriorated to the level of mere slogans. Further, because finding the material was difficult, especially at the beginning, getting the students to be active participants in the learning process was not always easy, a problem that would also partly explain the sloganeering.

In this connection, there was, also, those one or two cases in which the stronger student ended up merely sloganeering, or performed generally poorly. Such cases were no doubt statistically insignificant, but the Department did not see its students as mere statistics. There was thus the question whether poor performance was the Department's creation in such cases, especially because of having introduced a very demanding method (under the difficult economic conditions then prevailing in the country). However, there was the consolation that the better students always opted for the Department's courses, a sign, perhaps, that its theoretical framework addressed burning questions not otherwise addressed by the other.<sup>54</sup>

Another problem was that the curricula as spelled out in the University regulations were vague in that they usually just stated the broad areas of law to be covered, and sometimes added that these were to be covered in the social and economic setting of the country. It became necessary, therefore, to prepare fairly detailed course outlines spelling out the lecturer's interpretation of the curricula. The trouble was that sometimes

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54. Of course part of the explanation is also that Commercial Law I was compulsory. Besides Commercial Law courses are at times seen as bread-and-butter courses.

this detailedness was said, especially by the weak students, to be going beyond the syllabus. Therefore, it appeared that the curricula needed rewriting, but this was not always easy to steer through the Faculty Board because, as suggested above, the Faculty Administration did not favour the Department's approach.<sup>55</sup>

Finally, though the Department did not doubt the correctness of its theoretical framework, there was the unfortunate fact that the results of its methodology would be slow in getting back to it (i.e. the Department). In terms of professional competence and awareness of the problems of developing the country through law, what kind of lawyer had the Department actually produced? This information was needed to assist in reassessment and sharpening of the methodology. Otherwise, the accusation sometimes made that the Department was experimenting blindly on its students would persist and continue to complicate the operational environment. By 1985 the Department was beginning to hear from some former students and their employers from the Judiciary, the Attorney General's Chambers, the private practice, and parastatal organizations. It appeared that Commercial Law was producing lawyers knowledgeable in the law and useful in the all-demanding development process of their country.

However, needless to say, there remains a need to begin a systematic research project on the impact of Commercial Law's methodology and to discern its shortcomings (as well as its advantages) with some precision. Meaningful theory must constantly be fed on practice.

### III. Conclusion

Law-in-development at Makerere was initially part of the American sociological, pragmatic legal education tradition received through Dar es Salaam from the American law-and-development missionaries of the 1960's. In the first decade of the Faculty, it was never well articulated. It was always stated that law was to be taught in social and economic context. What this really meant was never clear.

Around 1980, the Commercial Law Department interpreted this to mean that law-in-development as a methodology would permeate the entire teaching of law in the Faculty. The Department also saw this as demanding the teaching of rules of law in social, economic and historical context,

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55. Some amendments to the Contract and Commercial Law syllabi were able to go through, but they were of minor nature.



informed by Political Economy, in order to produce lawyers who not only knew the technicalities of the law, but also understood them in their context, and appreciated the law's role in development. The vision was that of producing a lawyer who could help rebuild Uganda's society for the better. This interpretation was denied by other colleagues in the Faculty, who saw the primary purpose of the Faculty as teaching law as such, as rules, in order to prepare students for practice, where, it was alleged, most of them wanted to go. These colleagues felt that if law for development was to be taught, in appropriate subjects, it was in order, essentially, to help produce lawyers who could provide practical solutions to practical problems, in the image, that is, of the typical American policy-oriented problem-solver. This, we have argued, was a subtle reproduction of American conservative pragmatism, which was not appropriate for Uganda's society, which was trying to move itself forward. However, the specifics of the operationalization of this pragmatic law-in-development have not been gone into for lack of details.

It is into the actualisation of the Commercial Law Department's law-in-development that we have gone. Here, we have seen that there have been problems of shortage of, and finding and tailoring of, appropriate material; difficulties of developing expertise to communicate the material, especially to the weak students; difficulties with the Faculty Administration, and difficulties of getting feedback on the Department's products.

Perhaps, the most serious difficulty was that of developing expertise to tailor, develop and communicate the material, but it was, and is, expertise, which did not, and does not, have to develop out of another formal course. The experiences and lessons that exist must be exchanged between Faculties or Departments teaching in similar manners; they must be analysed and harnessed into better law-in-development legal education methodology. This, like development itself, must be an endless process.